

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Civil Action
)	No. 97CV-3829
The School District of)	
Philadelphia)	
)	
21st Street So. Of The Parkway)	
Philadelphia, PA 19103-1390)	
)	
Defendant.)	
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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States") on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed a complaint against Defendant, the School District of Philadelphia ("School District"), under Sections 6 and 17 of the Toxic Substances Control Act ("TSCA" or the "Act"), 15 U.S.C. §§ 2605 and 2616, seeking to compel cleanup and disposal of polychlorinated biphenyls ("PCBs") and to enjoin permanently the School District's violations of Sections 6(e) and 15 of TSCA, 15 U.S.C. §§ 2605(e) and 2614, and TSCA's implementing regulations codified at 40 C.F.R. Part 761 (the "PCB Rule"), at certain of the School District's facilities in Philadelphia, Pennsylvania identified in Exhibit A attached hereto (the "Facilities");

WHEREAS, the United States alleges that the School

District has failed to comply with the requirements of 40 C.F.R. part 761;

WHEREAS the School District admits the jurisdictional allegation of the complaint;

WHEREAS the School District neither admits nor denies the specific factual allegations of the complaint;

WHEREAS, the School District has submitted to EPA and reports that it has implemented a PCB Management Plan providing for, among other things, repair, inspection, cleanup and proper disposal of PCB contaminated materials, which Plan is attached hereto as Exhibit B, and the School District agrees to comply with the PCB Rule and perform the activities specified in Section V below;

WHEREAS, the parties to this suit, having agreed that settlement of this matter and entry of this Consent Decree without trial or further adjudication is the most appropriate means of resolving this matter, hereby stipulate that this Consent Decree should be entered.

NOW, THEREFORE, it is hereby ORDERED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter of this action and jurisdiction of the parties consenting hereto pursuant to Section 17(a) of TSCA, 15 U.S.C. § 2616(a) and 28 U.S.C. §§ 1331 and 1345. Venue is proper in this District pursuant to

Section 17(a) of the Act, 15 U.S.C. § 2616(a), and 28 U.S.C. § 1391(b). The Complaint states a claim upon which relief may be granted against the School District under Section 17(a) of the Act, 15 U.S.C. § 2616(a).

II. BINDING EFFECT

2. This Consent Decree shall apply to and be binding upon the United States and the School District, and upon the School District's officers, trustees, agents, employees, contractors, successors, and all persons or firms acting under or for them. The undersigned representatives of the School District certify that they are fully authorized by the School District to enter into the terms and conditions of this Consent Decree and to execute and to legally bind the School District to it. The School District shall provide a copy of this Decree to each person, including all contractors and subcontractors, retained to perform the actions contemplated by this Consent Decree and shall condition any contract for such actions on compliance with this Consent Decree.

3. With respect to those portions of the Facilities upon which activity has occurred or which have been affected by PCBs, and for which encapsulation has been implemented pursuant to Section V, paragraph 8 below, no conveyance of title, easement, or other possessory interest including, but not limited to, leaseholds in the Facility shall be consummated without a provision binding and obligating all parties who acquire any interest in the Facility to submit to the jurisdiction of this

Court and to all requirements and provisions of this Consent Decree. At least 60 days prior to any conveyance, the School District shall notify EPA by registered mail of its intent to convey any interest in the property and of the steps taken to comply with the provisions of this paragraph. No such conveyance shall relieve the School District from its obligation to perform under this Decree.

4. This Consent Decree shall be binding upon the School District upon the date the the School District signs the Consent Decree.

III. DEFINITIONS

5. Unless otherwise defined herein, terms relating to TSCA used in this Consent Decree shall have the meaning given to those terms in 40 C.F.R. Part 761.

IV. OBJECTIVES

6. It is the express purpose of the parties in entering this Decree to further the objectives of the Toxic Substances Control Act. All plans, studies, remedial measures, and other obligations in this Decree or resulting from the activities required by this Decree shall have the objective of causing the School District to achieve and maintain compliance with the Toxic Substances Control Act and the provisions of applicable federal and state laws and regulations.

V. COMPLIANCE REQUIREMENTS

7. Pre-cleanup Sampling. The School District shall continue to perform Pre-Cleanup sampling activities as follows:

a. Pre-cleanup Sampling Report. The School District has undertaken a study to determine the extent of PCB contamination at the Facilities. The results of the study have been or will be submitted to EPA for acceptance and EPA intends to respond to the adequacy of those results within 30 days of the date this Consent Decree is lodged with this Court. This study (the "Pre-Cleanup Sampling Report") includes the data gathered during the study, an analysis of those data, and conclusions concerning the extent of PCB contamination at the Facilities. The study includes sample results from: (1) the surfaces of the PCB Transformers; (2) oil stained areas and other areas suspected of being contaminated by PCBs on the floor of each transformer room or enclosure area at each Facility; (3) other areas suspected of being contaminated by PCBs, including the area directly outside any transformer enclosure areas; and (4) in the doorway of all exits from any transformer enclosure area, transformer room and rooms containing a transformer enclosure area. If PCB concentrations are found in excess of 100 ug/100 cm² within four feet of any exit from a transformer enclosure area or a room or area containing a transformer enclosure area, the study shall also include areas outside such exit.

b. EPA review of the sampling report is for purposes of determining that the scope of pre-cleanup sampling included

all potentially contaminated areas, but such review and any EPA approval of a sampling plan does not establish the sampling plan's technical adequacy and does not relieve the School District of its responsibility to identify all PCB contamination at the Facilities. In the event EPA does not accept the Pre-Cleanup Sampling Report, because the study does not present sufficient data, or because additional sampling and testing is necessary to determine the extent of PCB contamination at the Facilities, the School District shall submit a proposed sampling plan for performance of additional sampling and testing for PCB contamination to EPA for acceptance in accordance with paragraph 17 below. The School District's proposed sampling plan, if any, shall be submitted to EPA within 10 days after notification by EPA that additional sampling and testing is necessary and shall be implemented in accordance with this paragraph upon acceptance by EPA.

8. Decontamination/cleanup. The School District shall continue to perform decontamination/cleanup activities as follows:

a. Within 5 days of EPA's acceptance of the Pre-Cleanup Sampling Report, the School District shall submit a final Cleanup Plan to EPA for review. The Cleanup Plan shall be subject to EPA acceptance in accordance with paragraph 17 below. The Cleanup Plan shall include an expeditious schedule for completion of cleanup within 60 days of EPA acceptance of the

Cleanup Plan. The Cleanup Plan shall provide for cleaning and decontamination and removal and disposal of all PCB-contaminated surfaces and materials identified in the study or studies undertaken pursuant to this Consent Decree at the Facilities in accordance with 40 C.F.R. § 761.125. EPA review of the cleanup plan is to determine that the scope of cleanup includes all contaminated areas, but any such review, and any EPA acceptance of a cleanup plan, does not establish that the cleanup plan is technically adequate nor does such approval relieve the School District of its responsibility to cleanup all PCB contamination at the Facilities.

b. The Cleanup Plan shall require the following. Any metal or concrete surfaces at the Facilities identified as containing more than 10 micrograms of PCBs per 100 square centimeters (10 ug/100 cm²) shall be cleaned and decontaminated according to 40 C.F.R. 761.125 or removed and disposed of either in an incinerator that complies with 40 C.F.R. § 761.70 or in a chemical waste landfill that complies with 40 C.F.R. § 761.75. At the option of the School District, low-contact, indoor, nonimpervious surfaces may be cleaned either to 10 ug/100 cm² or to 100 ug/100 cm² and encapsulated in accordance with 40 C.F.R. § 761.125. In the event such surfaces cannot be cleaned to 100 ug/100 cm², the School District may propose encapsulation as an interim measure. If encapsulation is used, the School District must also propose long term steps (1) to ensure persons are not exposed to PCB contamination and the contamination is not spread,

and (2) to dispose of the contaminated material if feasible. These long term steps shall include, but not be limited to, permanent warning plaques or signs notifying persons of such contamination, maintenance of encapsulation, and a plan for removal and proper disposal of the contaminated material as soon as possible, but no later than at the time of the removal of the PCB Transformers at that Facility (or at the time of any activity that would disturb the contaminated material (such as renovation or demolition)) unless removal at that time is infeasible due to structural engineering concerns. In the event PCB contamination remains at a Facility, the School District shall file and record the removal and disposal plan as a deed notification and restriction notifying and requiring any subsequent purchaser of the Facility to remove and properly dispose of contaminated material prior to any activity that would disturb the contaminated material (such as renovation or demolition). The deed restriction shall be recorded and indexed in the Philadelphia County Office of the Recorder of Deeds, and if appropriate, in the Office of the Prothonotary, in such manner as shall be effective to bring the existence and extent of PCB contamination to the attention of any person examining or researching the state and/or quality of title of the real estate or searching for encumbrances, covenants, easements, liens, restrictions, or other limitations relating thereto of any School District Facility at which PCB contamination remains.

c. Upon acceptance by EPA, the School District shall

implement the cleanup plan in accordance with the accepted schedule (Implementation of the Cleanup Plan shall hereinafter be referred to as the "Work").

9. Post-Cleanup Sampling. The School District shall perform Post-Cleanup sampling activities as follows.

a. Within 45 days after EPA's acceptance of the Cleanup Plan, the School District shall submit a post-cleanup sampling plan to EPA for review. The Post-Cleanup Sampling Plan shall be subject to EPA acceptance in accordance with paragraph 17 below. EPA review of the sampling plan is for purposes of determining that the scope of post-cleanup sampling includes all decontaminated areas, but any such review, and any EPA acceptance of a sampling plan, does not establish that a sampling plan is technically adequate nor does such acceptance relieve the School District of its responsibility to identify all PCB contamination at the Facilities.

b. This sampling plan shall determine whether cleanup levels have been attained and evaluate the need for further remediation. Post-cleanup sampling shall be conducted in accordance with EPA Publication 560/5-85-026 Verification of PCB Spill Cleanup by Sampling and Analysis - August 1985. Post-cleanup sampling shall be conducted in all areas that are only cleaned, and are not encapsulated. Post-cleanup sampling shall include discrete wipe samples of concrete and impervious surfaces. The Post-Cleanup Sampling Plan shall comply with the

requirements of 40 C.F.R. § 761.130.

c. The Post-Cleanup Sampling Plan shall be implemented and the results of the study submitted to EPA within 45 days of completion of the cleanup.

10. Additional Work. If EPA determines that any PCBs have not been removed as required by the Cleanup Plan, surfaces have not been cleaned up to the standards set forth in 40 C.F.R. §§ 761.125(3) and (4), or PCBs have not been removed as required by this Decree, the School District shall submit a plan for additional cleanup to EPA for acceptance in accordance with paragraph 17 within 45 days of receipt of notice from EPA of such a determination. This Additional Work Plan shall include an expeditious schedule for completion of cleanup within 60 days of EPA acceptance of the Additional Work Plan and shall be implemented upon acceptance by EPA. The School District shall thereafter repeat remediation, post-cleanup sampling activities and Additional Work Plan submission and implementation until PCBs have been removed from the Facility as required by this Decree.

11. Disposal. The School District shall dispose of all PCB wastes at an approved offsite PCB incinerator or chemical waste landfill facility in accordance with 40 C.F.R. § 761.60 et seq.

12. Completion. The School District shall certify successful completion of cleanup to EPA in writing within 60 days of completion of final post-cleanup sampling. The School District's certification of completion of remediation activity shall include a description of all work completed under this

Decree. The School District shall attach all available documentation supporting its certification.

13. Transformer Upgrade/Removal. The School District shall remove or upgrade PCB Transformers as follows. Within 45 days of the lodging of this Consent Decree with the Court, the School District shall submit a Removal/Upgrade Plan to EPA for review. The Removal/Upgrade Plan shall include an expeditious schedule by which one third of the transformers identified in Exhibit A are removed or upgraded within one year of lodging of this Consent Decree with this Court, an additional one third of the transformers identified in Exhibit A are removed or upgraded within two years of the lodging of this Consent Decree, and the final one third of the transformers identified in Exhibit A are removed or upgraded within three years of the lodging of this Consent Decree. The Removal/Upgrade Plan shall be subject to EPA acceptance in accordance with paragraph 17 below. The Removal/Upgrade Plan shall provide for removal of the PCB Transformer(s) or provide enhanced electrical protection in accordance with all applicable laws. If the School District elects to remove any or all of the transformers, the plan must describe in detail the steps to be taken to remove and properly dispose of each transformer. If the School District elects to provide enhanced electrical protection for any or all of the transformers, the plan must describe in detail the steps to be taken to provide the appropriate protection as required by 40 C.F.R. §761.30(a)(1)(iv) and (v).

14. PCB Management Plan. The School District shall continue to implement the PCB Management Plan attached hereto as Exhibit B.

15. Other Laws. All activities undertaken by the School District in accordance with this Consent Decree shall be in compliance with all applicable Federal, State and local laws and regulations including any permit requirements. The School District shall identify and obtain all applicable permits, licenses and approvals required for performance of the Work in sufficient time to perform the Work as scheduled. The School District shall employ scientific, engineering, and construction practices that are generally recognized as sound and appropriate in performing Work pursuant to this Decree. All Work performed shall be under the direction and supervision of qualified personnel or contractors with experience in the types of tasks required for implementation of the Work.

16. Progress Reports. Beginning on the effective date of this Consent Decree and until EPA advises the School District that the Work is complete, the School District shall submit to EPA, at the address in paragraph 44 below, bi-monthly progress reports. EPA must receive each progress report no later than the seventh calendar day of the following months: January, March, May, July, September, and November. Each progress report shall include information from the preceding 2 calendar months. The progress reports shall include, at a minimum:

(a) a description of the Work completed and the actions that

have been taken toward achieving compliance with this Consent Decree;

(b) a description of all data anticipated and activities scheduled for the next 2 months;

(c) a description of any problems encountered or anticipated;

(d) any actions taken to prevent or mitigate such problems;

(e) a schedule for when such actions will be completed; and

(f) all modifications to the Work and schedule made in accordance with this Consent Decree during the reporting period.

17. All reports, plans, specifications, schedules and attachments required by this Consent Decree are subject to EPA acceptance and shall be deemed incorporated into this Consent Decree upon acceptance by EPA. EPA acceptance under this Consent Decree shall be in writing. In the event of conflict between this Consent Decree and any document attached to, incorporated in, or enforceable hereunder, the provisions of this Consent Decree shall control. In the event that EPA rejects any required submission, EPA will specify the deficiencies in writing. The School District shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within twenty (20) business days of receipt of EPA rejection or such longer time as may be specified by EPA. In the event of rejection of any revised submission, EPA may require the

School District to amend and resubmit the submission to EPA within ten (10) business days of receipt of notice of EPA's rejection or EPA may submit its own modifications to the School District, in which case the School District is hereby required to implement such modifications; provided, however, that in the event the School District believes EPA's proposed modification unreasonable, the School District may petition the Court for review in accordance with Paragraph 29 below. Any non-compliance with EPA-accepted reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA rejection, or non-compliance with EPA required modifications in the case of rejections as specified in this paragraph shall be considered a failure to comply with a requirement of this Consent Decree.

18. Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Consent Decree shall be hand delivered or sent by certified or express mail to EPA at the address designated in paragraph 44.

VI . SAFETY AND HEALTH

19. The School District shall employ contractors for the Work who are trained in safety and health procedures and shall at all times comply with applicable OSHA, federal, state, and local regulations designed to protect workers and the environment. The School District's employees having inspection responsibilities shall be trained in accordance with the PCB Management Plan

(Exhibit B).

VII. STIPULATED PENALTIES

20. If the School District fails to comply with any of the requirements of this Consent Decree, other than those requirements addressed by paragraph 20.b. and 20.c. below, including any milestone contained in the Cleanup Plan, the School District shall pay stipulated penalties for each violation as follows:

a. For violations of the requirements in paragraphs 8 and 13:

<u>Period of Failure to Comply</u>	<u>Penalty</u>
5th to 30th day	\$ 1,000.00/day per violation
31st to 60th day	\$ 2,000.00/day per violation
After 60 days	\$ 5,000.00/day per violation

b. If the School District fails to comply with a reporting deadline contained in this Consent Decree, the School District shall pay a stipulated penalty of \$250 per day of each failure to comply.

c. For violations of any requirements other than those identified in paragraphs 20.a. and 20.b. above of this Consent Decree:

<u>Period of Failure to Comply</u>	<u>Penalty</u>
5th to 30th day	\$ 250.00/day per violation
31st to 60th day	\$ 500.00/day per violation

After 60 days

\$ 1,000.00/day per violation

21. The stipulated penalties herein shall be in addition to, and not in lieu of, any other remedies or sanctions available to the United States by reason of the School District's failure to comply with the requirements of this Consent Decree, the PCB regulations or TSCA.

22. Payment of stipulated penalties shall be made within sixty (60) days of The School District's receipt of Plaintiff's written demand for such payment. Stipulated penalties shall be paid by the School District by check payable to "Treasurer of the United States," and shall be tendered to the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, Pennsylvania 19107. A copy of the transmittal letter and the check shall be mailed to the following: United States Environmental Protection Agency, Region III, Office of Regional Counsel, Attn: Suzanne Canning, Docket Clerk, 841 Chestnut Building, Philadelphia, PA 19107; and Environmental Enforcement Section, United States Department of Justice, P .O. Box 7611, Ben Franklin Station, Washington, D.C. 20044.

VIII. LATE PAYMENT CHARGE

23. The School District shall pay interest, at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, for any delinquent payment of any stipulated

penalty. In addition, after the first (30) days that any amount of a penalty is overdue, the School District shall pay a late payment charge of 6 per cent per annum on the amount of any penalty that is overdue.

IX. DELAYS OR IMPEDIMENTS TO PERFORMANCE (FORCE MAJEURE)

24. If any event occurs which causes or may cause the School District to violate any provision of this Consent Decree, the School District shall notify the Court, the United States Attorney for the Eastern District of Pennsylvania, EPA and the Department of Justice in writing immediately. The notice shall specifically reference Section IX of this Consent Decree and describe in detail the anticipated length of time the violation may persist, the precise cause or causes of the violation, the measures taken or to be taken by the School District to prevent or minimize the violation as well as to prevent future violations, and the timetable by which those measures will be implemented. The School District shall adopt all reasonable measures to avoid or minimize any such violation. Failure by the School District to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved, and shall constitute a waiver of the School District's right to obtain an extension of time for its obligations under this paragraph based on such incident.

25. If EPA agrees that the violation has been or will be caused entirely by circumstances beyond the control of the School

District or any entity controlled by the School District, including the School District's consultants and contractors, and that the School District could not have foreseen and prevented such violation, the time for performance of such requirement may be extended for a period not to exceed the actual delay resulting from such circumstance, and stipulated penalties shall not be due for said delay. In the event EPA does not so agree, the School District may submit the matter to the Court for resolution. If the School District submits the matter to the Court for resolution and the Court determines that the violation was caused entirely by circumstances beyond the control of the School District or any entity controlled by the School District, including the School District's consultants or contractors, the School District shall be excused as to that violation, but only for the period of time the violation continues due to such circumstances. If the School District submits the matter to the Court for resolution and the Court determines that the violation was not caused entirely by circumstances beyond the control of the School District or any entity controlled by the School District, including the School District's consultants or contractors, the School District shall pay all Court costs incurred by the United States in responding to the School District's petition to the Court, in addition to any stipulated penalties pursuant to this Decree that may have accrued from any violations.

26. Unanticipated or increased costs or expenses associated

with the implementation of this Consent Decree, or changed financial circumstances, shall not, in any event, serve as a basis for changes in this Consent Decree or extensions of time under this Consent Decree.

27. Compliance with any requirement of this Consent Decree, by itself, shall not constitute compliance with any other requirement. An extension of one compliance date based on a particular incident shall not result in an extension of a subsequent compliance date or dates unless specifically authorized by EPA. The School District must make an individual showing of proof regarding each delayed incremental step or other requirement for which an extension is sought.

28. The School District shall bear the burden of proving that any delay or violation of any requirement of this Consent Decree was caused entirely by circumstances beyond the control of the School District or any entity controlled by the School District, including the School District's consultants or contractors. The School District shall also bear the burden of proving the duration and extent of any delay or violation attributable to such circumstances.

X. DISPUTE RESOLUTION

29. If the parties are unable to agree upon any plan, procedure, standard, requirement, or other matter described herein, or in the event a dispute should arise among the parties regarding the implementation of the requirements of this Consent

Decree, the School District shall follow the position of the United States unless the School District files a petition with the Court for resolution of the dispute within thirty (30) days of receipt of notice of the United States' final position. The petition shall set out the nature of the dispute with a proposal for its resolution. The United States shall have thirty (30) days to file a response. In any such dispute, the School District shall have the burden of proving that EPA's position is arbitrary and capricious and not in accord with the objectives of this Consent Decree and that the School District's position will achieve compliance with the terms, conditions, requirements, and objectives of this Consent Decree, TSCA, and the PCB regulations, in an expeditious manner.

XI. RIGHT OF ENTRY

31. EPA and/or its representatives, oversight contractor, other contractors, and consultants, and attorneys for the United States shall have the authority to inspect the Facilities and surrounding location covered by this Consent Decree upon reasonable notice for the purposes of:

1. monitoring the progress of activities required by this Consent Decree;
2. verifying any data or information submitted to EPA in accordance with the terms of the Consent Decree;
3. obtaining splits of any samples taken by the School District or their consultants (in the event the School Districts fail to take samples within three (3) days of any request by EPA, EPA may enter for the purposes of obtaining samples); and

4. assessing the School District's compliance with this Consent Decree, the PCB regulations and TSCA.

The United States' right of entry and authority to obtain information under this Consent Decree shall be in addition to, not in limitation of, all rights of entry and authorities to obtain information available under federal law.

32. In addition to the plans, reports, and other documentation required to be provided to EPA by the School District under the terms of this Consent Decree, the School District shall also provide to EPA, upon EPA's request, any analytical data or any other documents that are, in EPA's judgment, necessary to evaluate proposals submitted by the School District, to review work performed or to be performed by the School District or to determine the School District's compliance with the terms of this Consent Decree, including the Cleanup Plan, Upgrade/Removal Plan, the PCB regulations and TSCA.

XII. WAIVER PROVISIONS

33. The School District shall not make any claims under any law, directly or indirectly against the United States, for indemnification or contribution by the United States, or make any other claims, for costs, expenses, or damages related to this action or incurred by the School District under this Consent Decree. Specifically, the School District waives and releases all claims against, and covenants not to sue, the United States for costs incurred by the School District in complying with this Consent Decree.

XIII. FAILURE OF COMPLIANCE

34. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that the School District's complete compliance with this Consent Decree will result in compliance with the provisions of the PCB regulations or TSCA. Notwithstanding EPA's review and approval of any plans formulated pursuant to this Consent Decree, the School District shall remain solely responsible for compliance with the terms of the PCB regulations, TSCA and this Consent Decree.

XIV. NON-WAIVER PROVISIONS

35. Compliance with this Consent Decree in no way affects or relieves the School District of responsibility to comply with any federal, state, or local law or regulation.

36. The Work undertaken by the School District and its contractors or subcontractors pursuant to this Decree shall be performed in compliance with all applicable federal, state and local laws (except to the extent that TSCA preempts such state and local laws) and regulations, and the School District and/or its contractors or subcontractors shall obtain all permits or approvals necessary under such laws or regulations.

37. This Consent Decree does not limit or affect the rights of the School District or the United States as against any third-parties, nor does it limit the rights of third-parties, not parties to this Consent Decree, against the School District.

38. The United States reserves all of its rights and remedies available to enforce the provisions of this Consent Decree.

39. This Consent Decree is intended to resolve all civil claims for injunctive relief under TSCA made in the complaint of the United States filed in this matter.

40. The United States reserves all of its rights and remedies as follows: (1) under all laws, including every provision of all environmental statutes, not specifically pled in the complaint filed in this action; (2) under TSCA to the extent not pled in the complaint in this case; (3) to respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment; (4) under any provision of criminal law; (5) with respect to any portion of the Facilities where environmental conditions have not already been characterized by sampling or other testing, or are not subject to sampling or other testing under the terms of this Consent Decree; (6) with respect to conditions at the Facilities unknown to EPA at the time of entry of this Consent Decree; and (7) for violations of federal or state law that occurred during or after implementation of the remedial action contemplated by this Consent Decree.

41. The remedial action contemplated by this Consent Decree is intended to remedy the violations of law that were the basis for the filing of the complaint. The United States does not warrant and expressly disclaims any interpretation of the Consent

Decree that the School District's compliance with the terms of this Consent Decree renders the Facility safe or appropriate for any future use.

42. During the course of the Work contemplated by this Decree, the School District shall be responsible for promptly responding to any emergencies or releases at the Facility and notifying the proper governmental authorities as required by federal, state or local laws and regulations.

XV. COSTS OF SUIT

43. Each party shall bear its own costs and attorney's fees in this action.

XVI. NOTIFICATION

44. Except as otherwise specified, notification to or communication with the parties required by the terms of this Consent Decree shall be as follows:

As to the U.S. Department of Justice:

ROBERT E. LEFEVRE
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044
DOJ Ref. No. 90-5-1-1-4353

NADINE OVERTON
Assistant United States Attorney
615 Chestnut Street
Philadelphia, PA 19107

As to the U.S. EPA:

JOHN RUGGERO
United States Environmental Protection
Agency, Region III
841 Chestnut Building (Mailcode - 3AT12)
Philadelphia, PA 19107

As to Defendant:

JACKIE B. SPARKMAN
Office of General Counsel
Philadelphia School District
2130 Arch Street, Fifth Floor
Philadelphia, PA 19103-1390

45. Notifications to or communications between EPA or the United States and the School District shall be deemed submitted on the date they are postmarked and sent by certified mail, return receipt requested.

XVII. MODIFICATION

46. Except as specifically provided for herein, or upon order of the Court sua sponte, or upon petition of a party, there shall be no modification of this Consent Decree without written approval of all of the parties to this Consent Decree and the Court.

XVIII. PUBLIC COMMENT

47. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of

any comments received.

XIX. CONTINUING JURISDICTION

48. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XX. CERTIFICATION

49. Any notice, report, certification, data presentation or other document submitted by the School District under or pursuant to this Consent Decree, which discusses, describes, demonstrates, supports any finding or makes any representation concerning the School District's compliance or non-compliance with any requirement(s) of this Consent Decree shall be certified by a responsible official of the School District.

50. A responsible official means: (a) A director, chairperson, trustee, president, secretary, treasurer or vice-president of the School District in charge of a principal business or administrative function, or any other person who performs significant policy or decision making functions for the School District, or (b) the manager of environmental matters for the School District, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

51. The certification of the responsible official shall be

in the following form:

I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

As to (the) (those) identified portion(s) of this (submission) (document) for which I cannot personally verify (its) (their) truth and accuracy, I certify as the responsible official having supervisory responsibility for the person(s) who, acting under my direct instruction, made the verification, that this information is true, accurate, and complete.

Signature

Title
- -

XXI. SEVERABILITY

52. The provisions of this Decree shall be severable, and should any provision be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Decree shall remain in full force and effect.

53. This is the entire agreement among the parties, and, except upon Order of the Court, no alterations, additions, or agreements shall be valid unless in writing, executed by the parties, and entered by this Court in accordance with Section XVII of the Decree.

XXII. TERMINATION

54. This Consent Decree shall remain in full force and effect for seven years from the effective date, or until the

School District has completed all requirements of this Consent Decree, and EPA has determined that the School District has satisfactorily achieved complete compliance with the Consent Decree as indicated by a letter to the Court from the United States, whichever comes sooner. The School District may thereafter request the Court to terminate the Consent Decree.

XXIII. DECREE VOIDABLE

55. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the parties.

XXIV. PRE-DATE OF ENTRY OBLIGATIONS

56. Obligations of the School District that pre-date the entry of this Consent Decree begin to run upon lodging of the Consent Decree. Liability for stipulated penalties, if applicable, shall accrue for violations of such obligations and payment of such stipulated penalties may be demanded by the United States as provided in this Consent Decree after entry of the Consent Decree.

THE PARTIES HEREBY CONSENT to the entry of this Consent
Decree:

FOR DEFENDANT:

3/13/97
DATE

Floyd W. Alston
Floyd W. Alston, President
Board of Education

3/2/97
DATE

Jackie B. Sparkman
Jackie B. Sparkman
Assistant Secretary

Approved as to form:

Barbara A. Chism
Attorney for School District

FOR THE UNITED STATES OF AMERICA:

5/1/68
DATE

L. Schiff
LOIS SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
United States Department of Justice
Washington, D.C. 20530

DATE

R. E. Lefevre
ROBERT E. LEFEVRE, Attorney
Environmental Enforcement Section
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

6/3/97
DATE

Michael P. Stiles
MICHAEL STILES
United States Attorney
Eastern District of Pennsylvania
601 Market Street
Philadelphia, PA 19107

6/3/97
DATE

Nadine E. Overton
NADINE OVERTON
Assistant United States Attorney
615 Chestnut Street
Philadelphia, PA 19107

3/28/97
DATE

Marcia E. Mulkey
MARCIA E. MULKEY
Regional Counsel
U. S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

March 19, 1997
DATE

Donna L. Travia
DONNA L. TRAVIA
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region III
841 Chestnut Street
Philadelphia, Pennsylvania 19107

ORDER

This Consent Decree (Civ.Action No. _____) is hereby
entered and made an Order of this Court this _____ day
of _____, 199 .

U.S. DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, NADINE OVERTON, hereby certify that a true and correct copy of the foregoing Notice of Lodging of Proposed Consent Decree was served by first class mail, postage prepaid this date upon the following:

Jackie B. Sparkman
Office of General Counsel
Philadelphia School District
2130 Arch Street, Fifth Floor
Philadelphia, PA 19103-1390


NADINE OVERTON
Assistant United States Attorney

DATE: 6/3/97

